719 CONSUMER PRODUCTS

719.1 Except as provided in §719.12, this section shall apply to any person who sells, supplies, offers for sale, or manufactures consumer products on or after June 30, 2004 or uses in the District of Columbia.

719.2 Except as provided in §719.12, §719.13, §719.16, and §719.19, no person shall sell, supply, offer for sale, or manufacture for sale in District of Columbia any consumer product manufactured on or after June 30, 2004 which contains volatile organic compounds in excess of the limits specified in the following Table of Standards:

Table of Standards (percent volatile organic compounds by weight)

PRODUCT CATEGORY	Effective Date 6/30/2004
Adhesives	
Aerosol:	
Mist Spray	65
Web Spray	55
Special Purpose Spray Adhesives:	
Mounting, Automotive Engine Compartment, and Flexible Vinyl	70
Polystyrene Foam and Automotive Headliner	65
Polylolefin and Laminate Repair / Egdebanding	60
Contact	80
Construction, Panel, and Floor Covering	15
General Purpose	10
Structural Waterproof	15
Air Fresheners	
Single-Phase Aerosols	30
Double-Phase Aerosols	25
Liquids / Pump Sprays Solids / Gels	183
Antiperspirants	
Aerosol	40 HVOC 10 MVOC
Non-Aerosol	0 HVOC 0 MVOC
Automotive Brake Cleaners	45
Automotive Rubbing or Polishing Compound	17

Automotive Wax, Polish, Sealant or Glaze	
Hard Paste Waxes	45
Instant Detailers	3
All Other Forms	15
Automotive Windshield Washer Fluids	35
Bathroom and Tile Cleaners	
Aerosols	7
All Other Forms	5
Bug and Tar Remover	40
Carburetor or Fuel-Injection Air Intake Cleaners	45
Carpet and Upholstery Cleaners	
Aerosols	7
Non-Aerosols (Dilutables)	0.1
Non-Aerosols (Ready-to-Use)	3.0
Charcoal Lighter Material	see 3 (e)
Cooking Spray	
Aerosols	18
Deodorants	
Aerosol	0 HVOC 10 MVOC
Non-Aerosol	0 HVOC 0 MVOC
Dusting Aids	
Aerosols	25
All Other Forms	7
Engine Degreasers	
Aerosol	35
Non-Aerosol	5
Fabric Protectants	60
Floor Polishes / Waxes	
Products for Flexible Flooring Materials	7
Products for Nonresilient Flooring	10
Wood Floor Wax	90
Floor Wax Strippers	
Non-Aerosol	see 3 (g)
Furniture Maintenance Products	
Aerosols	17
All Other Forms Except Solid or Paste	7
General Purpose Cleaners	
Aerosols	10
Non-Aerosols	4
General Purpose Degreasers	
Aerosols Non-Aerosols	504
Glass Cleaners	

Aerosols	12
Non-Aerosols	4
Hair Mousses	6
Hairshines	55
Hairsprays	55
Hair Styling Gels	6
Heavy-Duty Hand Cleaner or Soap	8
Insecticides	
Crawling Bug (Aerosol)	15
Crawling Bug (all other forms)	20
Flea and Tick	25
Flying Bug (Aerosol)	25
Flying Bug (all other forms)	35
Foggers	45
Lawn and Garden (all other forms)	20
Lawn and Garden (Non-Aerosol)	3
Wasp and Hornet	40
Laundry Prewash	
Aerosols / Solids	22
All Other Forms	5
Laundry Starch Products	5
Metal Polishes / Cleansers	30
Multi-Purpose Lubricant (Excluding Solid or Semi-Solid Products)	50
Nail Polish Remover	75
Non-Selective Terrestrial Herbicide	
Non-Aerosols	3
Oven Cleaners	
Aerosols / Pump Sprays	8
Liquids	5
Paint Remover or Strippers	50
Penetrants	50
Rubber and Vinyl Protectants	
Non-Aerosols	3
Aerosols	10
Sealants and Caulking Compounds	4
Shaving Creams	5
Silicone-Based Multi-Purpose Lubricants (Excluding Solid or Semi-Solid Products)	60
Spot Removers	
Aerosols	25
Non-Aerosols	8
Tire Sealants and Inflators	20
Undercoatings	
Aerosols	40

719.3 No person shall sell, supply, offer for sale, or manufacture for sale in the District of Columbia any antiperspirant or deodorant which contains any compound that has been identified by the CARB in Title 17, California Code of Regulations, Division 3, Chapter 1, Subchapter 7, §93000 as a toxic air contaminant.

719.4 Products that are diluted prior to use shall follow the standards below:

(a) For consumer products for which the label, packaging, or accompanying literature specifically states that the product should be diluted with water or non-VOC solvent prior to use, the limits specified in the Table of Standards shall apply to the product only after the minimum recommended dilution has taken place. For purposes of subsection 719.4, "minimum recommended dilution" shall not include recommendations for incidental use of a concentrated product to deal with limited special applications such as hard-to-remove soils or stains; and

(b) For consumer products for which the label, packaging, or accompanying literature states that the product should be diluted with any VOC solvent prior to use, the limits specified in the Table of Standards shall apply to the product only after the maximum recommended dilution has taken place.

719.5 Products registered under FIFRA; For those consumer products that are registered under the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA; 7 U.S.C. §136-136y), the effective date of the VOC standards specified in Table of standards is one year after the date specified in the Table of Standards.

719.6 The following requirements shall apply to all charcoal lighter material products as defined in §799:

(a) No person shall sell, supply, or offer for sale after June 30, 2004 any charcoal lighter material product unless at the time of the transaction:

(1) the manufacturer can demonstrate that they have been issued a currently effective certification by the CARB under the Consumer Products provisions under Subchapter 8.5, Article 2, §94509(h), of Title 17 of the California Code of Regulations. This certification remains in effect for the District of Columbia for as long as the CARB certification remains in effect. Any manufacture claiming such a certification on this basis must submit to the District a copy of the certification decision (i.e., the Executive Order), including all conditions established by CARB applicable to the certification;

(2) the manufacturer or distributor of the charcoal lighter material has been issued a currently effective certification pursuant to paragraph (b);

(3) the charcoal lighter material meets the formulation criteria and other conditions specified in the applicable ACP Agreement issued pursuant to 719.6 (b) through (f); and

(4) the product usage directions for the charcoal lighter material are the same as those provided to the District of Columbia pursuant to paragraph (d);

(b) No charcoal lighter material formulation shall be certified under this subsection unless the applicant for certification demonstrates to the District of Columbia's satisfaction that the VOC emissions from the ignition of charcoal with the charcoal lighter material are less than or equal to 0.020 pound of VOC per start, using the procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol, dated February 27, 1991 (the "South Coast Air Quality Management District Rule 1174 Testing Protocol"). The provisions relating to LVP-VOC in §§799 and 719.12(f) shall not apply to any charcoal lighter material subject to the requirements of §719.2 and §719.6;

(c) The District may approve alternative test procedures that are shown to provide equivalent results to those obtained using the South Coast Air Quality Management District Rule 1174 Test Protocol;

(d) A manufacturer or distributor of charcoal lighter material may apply to the District for certification of a charcoal lighter material formulation in accordance with subsection 719.2**.** The application shall be in writing and shall include, at a minimum, the following:

(1) The results of testing conducted pursuant to the procedures specified in South Coast Air Quality Management District Rule 1174 Testing Protocol; and

(2) The exact text and/or graphics that will appear on the charcoal lighter material's principal display panel, label, and any accompanying literature. The provided material shall clearly show the usage directions for the product. These directions shall accurately reflect the quantity of charcoal lighter material per pound of charcoal that was used in the South Coast Air Quality Management District Rule 1174 Testing Protocol for that product, unless:

(A) The charcoal lighter material is intended to be used in fixed amounts independent of the amount of charcoal used, such as certain paraffin cubes; or

(B) The charcoal lighter material is already incorporated into the charcoal, such as certain "bag light," "instant light" or "match light" products;

(3) The usage instructions provided to the District of Columbia shall accurately reflect the quantity of charcoal lighter material used in the South Coast Air Quality Management District Rule 1174 Testing Protocol for charcoal lighter material which meets the criteria specified in paragraph (d);

(4) Any physical property data, formulation data, or other information required by the District of Columbia for use in determining when a product modification has occurred and for use in determining compliance with the conditions specified on the ACP Agreement issued pursuant to §719.6;

(e) Within thirty (30) days of receipt of an application, the District shall advise the applicant in writing either that it is complete or that specified additional information is required to make it complete. Within thirty (30) days of receipt of additional information, the District shall advise the applicant in writing either that the application is complete, or that specified additional information or testing is still required before it can be deemed complete;

(f) If the District finds that an application meets the requirements of paragraph 719.6, then an ACP Agreement shall be issued certifying the charcoal lighter material formulation and specifying such conditions as are necessary to insure that the requirements of subparagraph (f) are met. The District shall act on a complete application within ninety (90) days after the application is deemed complete;

(g) Notice of Modifications. For any charcoal lighter material for which certification has been granted pursuant to subsection 719.6, applicant for certification shall notify the District in writing within thirty (30) days of: (i) any change in the usage directions, or (ii) any change in product formulation, test results, or any other information submitted pursuant to subsection 719.6 which may result in VOC emissions greater than 0.020 pound of VOC per start;

(h) Revocation of Certification. If the District determines that any certified charcoal lighter material formulation results in VOC emissions from the ignition of charcoal which are greater than 0.020 pound of VOC per start, as determined by the South Coast Air Quality Management District Rule 1174

Testing Protocol and the statistical analysis procedures contained therein, the District of Columbia shall revoke or modify the certification as is necessary to assure that the charcoal lighter material will result in VOC emissions of less than or equal to 0.020 pound of VOC per start. The District shall not revoke or modify the prior certification without first affording the applicant for the certification an opportunity for a hearing in accordance with the procedures specified in Title 17, California Code of Regulations, Division 3, Chapter 1, Subchapter 1, Article 4 (commencing with §60040) or applicable District of Columbia laws and regulations, to determine if the certification should be modified or revoked.

719.7 Requirements for aerosol adhesives. As specified in California Code §41712(h)(2) or applicable District of Columbia laws and regulations, the standards for aerosol adhesives apply to all uses of aerosol adhesives, including consumer, industrial, and commercial uses. Except as otherwise provided in subsections 719.12, 719.13, and 719.18, no person shall sell, supply, offer for sale, use or manufacture for sale in District of Columbia any aerosol adhesive which, at the time of sale, use, or manufacture, contains VOCs in excess of the specified standard;

(a) In order to qualify as a "Special Purpose Spray Adhesive" the product must meet one or more of the definitions specified in §799, but if the product label indicates that the product is suitable for use on any substrate or application t listed in §799, then the product shall be classified as either a "Web Spray Adhesive" or a "Mist Spray Adhesive";

(b) If a product meets more than one of the definitions specified in §799 for "Special Purpose Spray Adhesive", and is not classified as a "Web Spray Adhesive" or "Mist Spray Adhesive" under subsection 719.2(e)(2) then the VOC limit for the product shall be the lowest applicable VOC limit specified in §719.2;

(c) Effective June 30, 2004, no person shall sell, supply, offer for sale, or manufacture for use in District of Columbia any aerosol adhesive which contains any of the following compounds: methylene chloride, perchloroethylene, or trichloroethylene;

(d) All aerosol adhesives must comply with the labeling requirements specified in §719.6.

719.8 Requirements for Floor Wax Strippers. No person shall sell, supply, offer for sale, or manufacture for use in District of Columbia any floor wax stripper unless the following requirements are met:

(a) The label of each non-aerosol floor wax stripper must specify a dilution ratio for light or medium build-up of polish that results in an as-used VOC concentration of three (3) percent by weight or less.

(b) If a non-aerosol floor wax stripper is also intended to be used for removal of heavy build-up of polish, the label of that floor wax stripper must specify a dilution ratio for heavy build-up of polish that results in an as-used VOC concentration of twelve (12) percent by weight or less.

(c) The terms "light build-up", "medium build-up" or "heavy build-up" are not specifically required, as long as comparable terminology is used.

719.9 Products containing ozone-depleting compounds. For any consumer product for which standards are specified under subsection719.2**,** no person shall sell, supply, offer for sale, or manufacture for sale in District of Columbia any consumer product which contains any of the following ozone-depleting compounds:

CFC-11 (trichlorofluoromethane);
CFC-12 (dichlorodifluoromethane);
CFC-113 (1,1,1-trichloro-2,2,2-trifluoroethane);
CFC-114 (1-chloro-1,1-difluoro-2-chloro-2,2-difluoroethane);
CFC-115 (chloropentafluoroethane);
halon 1211 (bromochlorodifluoromethane);
halon 1301 (bromotrifluoromethane);
halon 2402 (dibromotetrafluoroethane);
HCFC-22 (chlorodifluoromethane);
HCFC-123 (2,2-dichloro-1,1,1-trifluoroethane);
HCFC-124 (2-chloro-1,1,1,2-tetrafluoroethane);
HCFC-141b (1,1-dichloro-1-fluoroethane);
HCFC-142b (1-chloro-1, 1-difluoroethane);
1,1,1-trichloroethane, and carbon tetrachloride.

719.10 The requirements of §719.9 shall not apply to any existing product formulation that complies with the Table of Standards or any existing product formulation that is reformulated to meet the Table of Standards, provided the ozone depleting compound content of the reformulated product does not increase.

719.11 The requirements of §719.9 shall not apply to any ozone depleting compounds that may be present as impurities in a consumer product in an amount equal to or less than 0.01% by weight of the product.

719.12 The following exemptions shall apply:

(a) This provisions of this Section shall not apply to any consumer product manufactured in the District of Columbia for shipment and use outside of the District of Columbia;

(b) The provisions of this Section shall not apply to a manufacturer or distributor who sells, supplies, or offers for sale in District of Columbia a consumer

product that does not comply with the VOC standards specified in §719.2, as long as the manufacturer or distributor can demonstrate both that the consumer product is intended for shipment and use outside of District of Columbia, and that the manufacturer or distributor has taken reasonable prudent precautions to assure that the consumer product is not distributed to the District of Columbia. Paragraph (b) does not apply to consumer products that are sold, supplied, or offered for sale by any person to retail outlets in District of Columbia;

(c) The medium volatility organic compound (MVOC) content standards specified in §719.2 for antiperspirants or deodorants, shall not apply to ethanol;

(d) The VOC limits specified in §719.2 shall not apply to fragrances up to a combined level of two (2) percent by weight contained in any consumer product and shall not apply to colorants up to a combined level of 2 percent by weight contained in any antiperspirant or deodorant;

(e) The requirements of §719.2 for antiperspirants or deodorants shall not apply to those volatile organic compounds that contain more than ten (10) carbon atoms per molecule and for which the vapor pressure is unknown, or that have a vapor pressure of two (2) mm Hg or less at $20^{o}C$;

(f) The VOC limits specified in §719.2 shall not apply to any LVP-VOC;

(g) The requirements of §719.14 shall not apply to consumer products registered under the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA; 7 U.S.C. §136/136y);

(h) The VOC limits specified in §719.2 shall not apply to air fresheners that are comprised entirely of fragrance, less compounds not defined as VOCs under §799 or exempted under §§719.3;

(i) The VOC limits specified in §719.2 shall not apply to air fresheners and insecticides containing at least ninety-eight (98) percent paradichlorobenzene;

(j) The VOC limits specified in §719.2 shall not apply to adhesives sold in containers of one (1) fluid ounce or less; and

(k) The VOC limits specified in §719.2 shall not apply to bait station insecticides. For the purpose of this section, bait station insecticides are containers enclosing an insecticidal bait that is not more than 0.5 ounce by weight, where the bait is designed to be ingested by insects and is composed of solid material feeding stimulants with less than five (5) percent active ingredients.

719.13 Any manufacturer of consumer products which have been granted an Innovative Product exemption by the CARB under the Innovative Products provisions in Subchapter 8.5, Article 2, §94511, or Subchapter 8.5, Article 1, §94503.5 of Title 17 of the California Code of Regulations shall be exempt from the Table of Standards in §719.2 for the period of time that the CARB Innovative Products exemption remains in effect provided that all consumer products within the CARB Innovative Products exemption are contained in the Table of Standards in §719.2 of this section. Any manufacturer claiming such an exemption on this basis must submit to the appropriate District of Columbia agency a copy of the CARB Innovative Product exemption decision (i.e., the Executive Order), including all conditions established by CARB applicable to the exemption.

(a) Manufacturers of consumer products that have been granted an Innovative Products exemption under the Innovative Products provisions in Subchapter 8.5, Article 2, §94511, or Subchapter 8.5, Article 1, §94503.5 of Title 17 of the California Code of Regulations based on California specific data, or that have not been granted an exemption by the CARB may seek an Innovative Products exemption in accordance with the following criteria:

(1) District shall exempt a consumer product from the VOC limits specified in §719.2 if a manufacturer demonstrates by clear and convincing evidence that, due to some characteristic of the product formulation, design, delivery systems or other factors, the use of the product will result in less VOC emissions as compared to:

(A) the VOC emissions from a representative consumer product which complies with the VOC limits specified in §719.2; or

(B) the calculated VOC emissions from a noncomplying representative product, if the product had been reformulated to comply with the VOC limits specified in §719.2. VOC emissions shall be calculated using the following equation:

$$E_R = E_{NC} \times VOC_{STD} \ , \ VOC_{NC}$$

where:

E_R = The VOC emissions from the noncomplying representative product, had it been reformulated.

E_{NC} = The VOC emissions from the noncomplying representative product in its current formulation.

VOC_{STD} = the VOC limit specified in the table of standards in §719.2

VOC_{NC} = the VOC content of the noncomplying product in its current formulation.

If a manufacturer demonstrates that this equation yields inaccurate results due to some characteristic of the product formulation or other factors, an alternative method that accurately calculates emissions may be used upon approval of the District;

(2) For the purposes of this section, "representative consumer product" means a consumer product that meets all of the following criteria:

(A) The representative product shall be subject to the same VOC limit in §719.2 as the innovative product;

(B) The representative product shall be of the same product form as the innovative product, unless the innovative product uses a new form that does not exist in the product category at the time the application is made; and

(C) The representative product shall have at least similar efficacy as other consumer products in the same product category based on tests generally accepted for that product category by the consumer products industry;

(3) A manufacturer shall apply in writing to the District for any exemption claimed under subparagraph (A)(1). The application shall include the supporting documentation that demonstrates the emissions from the innovative product, including the actual physical test methods used to generate the data and, if necessary, the consumer testing undertaken to document product usage. In addition, the applicant must provide any information necessary to enable the District of Columbia to establish enforceable conditions for granting the exemption including the VOC content for the innovative product and test methods for determining the VOC content. All information submitted by a manufacturer pursuant to this section shall be handled in accordance with the procedures specified in applicable District of Columbia confidentiality requirements (20 DCMR 106);

(4) Within thirty (30) days of receipt of the exemption application the District shall determine whether an application is complete as provided in applicable District of Columbia laws or regulations;

(5) Within ninety (90) days after an application has been deemed complete, the District shall determine whether, under what

conditions, and to what extent, an exemption from the requirements of §719.2 will be permitted. The applicant and the District may mutually agree to a longer time period for reaching a decision, and additional supporting documentation may be submitted by the applicant before a decision has been reached. The District shall notify the applicant of the decision in writing and specify such terms and conditions that are necessary to insure that emissions from the product will meet the emissions reductions specified in subparagraph (A)(1), and that such emissions reductions can be enforced;

(6) In granting an exemption for a product the District shall establish conditions that are enforceable. These conditions shall include the VOC content of the innovative product, dispensing rates, application rates and any other parameters determined by the District to be necessary. The District shall also specify the test methods for determining conformance to the conditions established. The test methods shall include criteria for reproducibility, accuracy, sampling and laboratory procedures;

(7) For any product for which an exemption has been granted pursuant to this section, the manufacturer shall notify the District in writing within thirty (30) days of any change in the product formulation or recommended product usage directions, and shall also notify the District within thirty (30) days if the manufacturer learns of any information which would alter the emissions estimates submitted to the District support of the exemption application;

(8) If the VOC limits specified in §719.2 are lowered for a product category through any subsequent rule making, all innovative product exemptions granted for products in the product category, except as provided in this subparagraph, shall have no force and effect as of the effective date of the modified VOC standard. This subparagraph shall not apply to those innovative products which have VOC emissions less than the applicable lowered VOC limit and for which a written notification of the product's emissions status versus the lowered VOC limit has been submitted to and approved by the District at least 60 days before the effective date of such limits; and

(9) If the District believes that a consumer product for which an exemption has been granted no longer meets the criteria for an innovative product specified in subparagraph (A)(1), the District may modify or revoke the exemption as necessary to assure that the product will meet these criteria. The District shall not modify or revoke an exemption without first affording the applicant an opportunity for a public hearing held in accordance with the

procedures specified by applicable District of Columbia laws or regulations.

719.14 Code-Dating. Each manufacturer of a consumer product subject to §§719.2 through 719.13 shall clearly display on each consumer product container or package, the day, month, and year on which the product was manufactured, or a code indicating such date. The date or date-code information shall be located on the container or inside the cover/cap so that it is readily observable or obtainable (by simply removing the cap/cover) without disassembling any part of the container or packaging. This date or code shall be displayed on each consumer product container or package no later than twelve months prior to the effective date of the applicable standard specified in §719.2. No person shall erase, alter, deface or otherwise remove or make illegible any date or code-date from any regulated product container without the express authorization of the manufacturer. The requirements of this provision shall not apply to products containing no VOCs (as defined in §799), or containing VOCs at 0.10% by weight or less; and

(a) If a manufacturer uses a code indicating the date of manufacture, for any consumer product subject to §719.2 an explanation of the code must be filed with the District of Columbia no later than twelve (12) months prior to the effective date of the applicable standard specified in §719.2.

719.15 Most Restrictive Limit. Notwithstanding the definition of "product category" in §799, if anywhere on the principal display panel of any consumer product, any representation is made that the product may be used as, or is suitable for use as a consumer product for which a lower VOC limit is specified in §719.2, then the lowest VOC limit shall apply. This requirement does not apply to general purpose cleaners and antiperspirant/deodorant products.

719.16 In addition to the requirements specified in subsections 719.6, 719.14, and 719.15, both the manufacturer and responsible party for each aerosol adhesive product subject to this regulation shall ensure that all products clearly display the following information on each product container that is manufactured on or after June 30, 2004:

(a) The aerosol adhesive category as specified in §719.2 or an abbreviation of the category shall be displayed; and

(b) The applicable VOC standard for the product that is specified in §719.2, expressed as a percentage by weight, shall be displayed unless the product is included in an alternative control plan approved by the District, as provided in §719.1, and the product exceeds the application;

(1) If the product is included in an alternative control plan approved by the District, and the product exceeds the applicable VOC standard specified in §719.2, the product shall be labeled with the term "ACP" or "ACP product";

(c) If the product is classified as a special purpose spray adhesive, the applicable substrate and /or application or an abbreviation of the substrate / application that qualifies the product as special purpose shall be displayed;

(d) If the manufacturer or responsible party uses an abbreviation as allowed by subsection 719.16**,** an explanation of the abbreviation must be filed with the District before the abbreviation is used;

(e) The information required in subsections 719.14 through 719.16, shall be displayed on the product container such that it is readily observable without removing or disassembling any portion of the product container or packaging. For the purposes of this subsection, information may be displayed on the bottom of a container as long as it is clearly legible without removing any product packaging; and

(f) No person shall remove, alter, conceal, or deface the information required in §719.16 prior to final sale of the product.

719.17 Any person who sells, supplies, offers for sale, or manufactures consumer products on or after June 30, 2004 or use in the District of Columbia shall comply with the following reporting requirements:

(a) Upon ninety (90) days written notice, the District may require any responsible party to report information for any consumer product or products the District may specify including, but not limited to, all or part of the following information:

(1) The name of the responsible party and the party's address, telephone number, and designated contact person;

(2) Any claim of confidentiality made pursuant to applicable District of Columbia confidentiality requirements (20 DCMR 106);

(3) The product brand name for each consumer product subject to registration and upon request by the District, the product label;

(4) The product category to which the consumer product belongs;

(5) The applicable product form(s) listed separately;

(6) An identification of each product brand name and form as a "Household Product", "I&I Product", or both;

(7) Separate District of Columbia sales in pounds per year, to the nearest pound, and the method used to calculate District of Columbia sales for each product form;

(8) For registrations submitted by two companies, an identification of the company which is submitting relevant data separate from that submitted by the responsible party. All registration information from both companies shall be submitted by the date specified in §719.17(a);

(9) For each product brand name and form, the net percent by weight of the total product, less container and packaging, comprised of the following, rounded to the nearest one-tenth of a percent (0.1%):

(A) Total Table B Compounds;
(B) Total LVP-VOCs that are not fragrances;
(C) Total All Other Carbon-Containing Compounds that are not fragrances;
(D) Total All Non-Carbon-Containing Compounds;
(E) Total Fragrance;
(F) For products containing greater than two percent by weight fragrance:

(i) the percent of fragrance that are LVP-VOCs, and
(ii) the percent of fragrance that are all other carbon-containing compounds

(G) Total Paradichlorobenzene;

(10) For each product brand name and form, the identity, including the specific chemical name and associated Chemical Abstract Services (CAVES) number, of the following:

(A) Each Table B Compound; and
(B) Each LVP-VOC that is not a fragrance.

(11) If applicable, the weight percent comprised of propellent for each product; and

(12) If applicable, an identification of the type of propellent (Type A, Type B, Type C, or a blend of the different types);

(b) In addition to the requirements of §719.17(a)(10), the responsible party shall report or arrange to have reported to the District the net percent by weight of each ozone-depleting compound which is:

(1) listed in §719.2(h); and

(2) contained in a product subject to registration under §719.17(a) in any amount greater than 0.1 percent by weight.

(c) All information submitted by responsible parties pursuant to §719.6 shall be handled in accordance with the procedures specified in applicable District of Columbia confidentiality requirements (20 DCMR 106).

(d) Special Reporting Requirements for Consumer Products that Contain Perchloroethylene or Methylene Chloride.

(1) The requirements of this subsection shall apply to all responsible parties for consumer products that are subject to §719.2(a) and contain perchloroethylene or methylene chloride. For the purposes of this subsection, a product "contains perchloroethylene or methylene chloride" if the product contains 1.0 percent or more by weight (exclusive of the container or packaging) of either perchloroethylene or methylene chloride.

(2) For each consumer product that contains perchloroethylene or methylene chloride, the responsible party shall report the following information for products sold in District of Columbia during each calendar year, beginning with the year 2005, and ending with the year 2010:

(A) the product brand name and a copy of the product label with legible usage instructions;

(B) the product category to which the consumer product belongs;

(C) the applicable product form(s) (listed separately);

(D) for each product form listed in (iii), the total sales in District of Columbia during the calendar year, to the nearest pound (exclusive of the container or packaging), and the method used for calculating the District of Columbia sales; and

(E) the weight percent, to the nearest 0.10 percent, of perchloroethylene and methylene chloride in the consumer product.

(3) The information specified in §§719.6(d)(2) shall be reported each calendar year by March 1 of the following year. The first report shall be due on March 1, 2006, for calendar year 2005. A new report is

due on March 1 of each year thereafter, until March 1, 2011, when the last report is due.

719.18 Any person who cannot comply with the requirements set forth in §719.2-719.11, because of extraordinary reasons beyond the person's reasonable control may apply in writing to the District for a variance.

(a) The variance application shall set forth:

(1) The specific grounds upon which the variance is sought; and

(2) The proposed date(s) by which compliance with the provisions of §719.2-719.11 will be achieved; and

(3) A compliance report reasonably detailing the method(s) by which compliance will be achieved; and

(b) Upon receipt of a variance application containing the information required in subsection (a), the District shall hold a public hearing to determine whether, under what conditions, and to what extent, a variance from the requirements in §719.2-719.11 is necessary and will be permitted. A hearing shall be initiated no later than seventy-five (75) days after receipt of a variance application. Notice of the time and place of the hearing shall be sent to the applicant by certified mail not less than thirty (30) days prior to the hearing. Notice of the hearing shall also be submitted for publication in the District of Columbia Register and sent to every person who requests such notice, not less than thirty (30) days prior to the hearing. The notice shall state that the parties may, but need not be, represented by counsel at the hearing. At least thirty (30) days prior to the hearing, the variance application shall be made available to the public for inspection. Information submitted to the District of Columbia by a variance applicant may be claimed as confidential, and such information shall be handled in accordance with the procedures specified in applicable District of Columbia laws and regulations. The District may consider such confidential information in reaching a decision on a variance application. Interested members of the public shall be allowed a reasonable opportunity to testify at the hearing and their testimony shall be considered; and

(c) No variance shall be granted unless all of the following findings are made:

(1) because of reasons beyond the reasonable control of the applicant, requiring compliance with §719.2-719.11 would result in extraordinary economic hardship; and

(2) the public interest in mitigating the extraordinary hardship to the applicant by issuing the variance outweighs the public interest in

avoiding any increased emissions of air contaminants which would result from issuing the variance; and

(3) the compliance report proposed by the applicant can reasonably be implemented, and will achieve compliance as expeditiously as possible; and

(d) Any variance order shall specify a final compliance date by which the requirements of §719.2-719.11 will be achieved. Any variance order shall contain a condition that specifies increments of progress necessary to assure timely compliance, and such other conditions that the District, in consideration of the testimony received at the hearing, finds necessary to carry out the purposes of applicable District of Columbia health and safety laws and regulations; and

(e) A variance shall cease to be effective upon failure of the party to whom the variance was granted to comply with any term or condition of the variance; and

(f) Upon the application of any person, the District may review, and for good cause, modify or revoke a variance from requirements of §719.2-719.11 after holding a public hearing in accordance with the provisions of applicable District of Columbia health and safety laws and regulations; and

719.19 Test Methods. (NOTE: §719.19(b) utilizes the numbering scheme from CARB Method 310 for sections 3.5, 3.6, and 3.7 as shown below and recites CARB Method 310, Sections 3.5, 3.6, and 3.7 verbatim. §719.19 (b) is reproduced here for informational purposes.)

(a) Testing to determine compliance with the requirements of this regulation, shall be performed using CARB Method 310, Determination of Volatile Organic Compounds (VOC) in Consumer Products, adopted September 25, 1997, and as last amended on September 3, 1999, which is incorporated herein by reference. Alternative methods which are shown to accurately determine the concentration of VOCs in a subject product or its emissions may be used upon approval of the District of Columbia.

(b) In sections 3.5, 3.6, and 3.7 of CARB Method 310, a process is specified for the "Initial Determination of VOC Content" and the "Final Determination of VOC Content". This process is an integral part of testing procedure set forth in CARB Method 310, and is reproduced below:

3.5 Initial Determination of VOC Content. The District will determine the VOC content pursuant to sections 3.2 and 3.3 Only those components with concentrations equal to or greater than 0.1 percent by weight will be reported.

3.5.1 Using the appropriate formula specified in §719.12, the District will make an initial determination of whether the product meets the applicable VOC standards specified in CARB regulations. If initial results show that the product does not meet the applicable VOC standards, the District may perform additional testing to confirm the initial results.

3.5.2 If the results obtained under §3.5.1 show that the product does not meet the applicable VOC standards, the District will request the product manufacturer or responsible party to supply product formulation data. The manufacturer or responsible party shall supply the requested information. Information submitted to the District may be claimed as confidential; such information will be handled in accordance with the confidentiality procedures specified in Title 17, California Code of Regulations, sections 91000 to 91022 or applicable District of Columbia laws and regulations; and

3.5.3 If the information supplied by the manufacturer or responsible party shows that the product does not meet the applicable VOC standards, then the District will take appropriate enforcement action; and

3.5.4 If the manufacturer or responsible party fails to provide formulation data as specified in §3.5.2, the initial determination of VOC content under this §3.5 shall determine if the product is in compliance with the applicable VOC standards. This determination may be used to establish a violation of District of Columbia regulations.

3.6 Determination of the LVP-VOC status of compounds and mixtures. This section does not apply to antiperspirant and deodorants or aerosol coating products because there is no LVP-VOC exemption for these products.

3.6.1 Formulation data: If the vapor pressure is unknown, the following ASTM methods may be used to determine the LVP-VOC status of compounds and mixtures: ASTM D 86-96 (April 10, 1996), ASTM D 850-93 (April 15, 1993), ASTM D 1078-97 (July 10, 1997), ASTM D 2879-97 (April 10, 1997), as modified in Appendix B to this Method 310, ASTM D 2887-97 (April 10, 1997) and ASTM E 1719-97 (March 10, 1997); and

3.6.2 LVP-VOC status of "compounds" or "mixtures." The District will test a sample of the LVP-VOC used in the product formulation to determine the boiling point for a compound or for a mixture. If the boiling point exceeds 216°C, the compound or mixture is an LVP-VOC. If the boiling point is less than 216°C, then the weight percent of the mixture which boils above 216°C is an LVP-VOC. The District will use the nearest five (5) percent distillation cut that is greater than 216°C as determined under 3.6.1 to determine the percentage of the mixture qualifying as an LVP-VOC.

3.6.3 Reference method for identification of LVP-VOC compounds and mixtures. If a product does not qualify as an LVP-VOC under 3.6.2, the District will test a sample of the compound or mixture used in a products formulation utilizing one or both of the following: ASTM D 2879-97, as modified in Appendix B to this Method 310, and ASTM E 1719-97, to determine if the compound or mixture meets the requirements of Title 17, CAR, §94508(78)(A).

3.7 Final Determination of VOC Content: If a product's compliance status is not satisfactorily resolved under sections 3.5 and 3.6, the District will conduct further analyses and testing as necessary to verify the formulation data.

3.7.1 If the accuracy of the supplied formulation data is verified and the product sample is determined to meet the applicable VOC standards, then no enforcement action for violation of the VOC standards will be taken; and

3.7.2 If the District is unable to verify the accuracy of the supplied formulation data, then the District will request the product manufacturer or responsible party to supply information to explain the discrepancy; and

3.7.3 If there exists a discrepancy that cannot be resolved between the results of Method 310 and the supplied formulation data, then the results of Method 310 shall take precedence over the supplied formulation data. The results of Method 310 shall then determine if the product is in compliance with the applicable VOC standards, and may be used to establish a violation of District of Columbia regulations.

(b) VOC content determinations using product formulation and records. Testing to determine compliance with the requirements of this regulation may also be

demonstrated through calculation of the VOC content from records of the amounts of constituents used to make the product pursuant to the following criteria:

(1) Compliance determinations based on these records may not be used unless the manufacturer of a consumer product keeps accurate records for each day of production of the amount and chemical composition of the individual product constituents. These records must be kept for at least three (3) years.

(2) For the purposes of this section (b), the VOC content shall be calculated according to the following equation:

$$\text{VOC Content} = \frac{B - C}{A} \times 100$$

where,

A = total net weight of unit (excluding container and packaging)

B = total weight of all VOCs, as defined in §799, per unit

C = total weight of VOCs exempted under §719.12, per unit

(3) If product records appear to demonstrate compliance with the VOC limits, but these records are contradicted by product testing performed using CARB Method 310, the results of CARB Method 310 shall take precedence over the product records and may be used to establish a violation of the requirements of this regulation.

(c) Determination of liquid or solid: Testing to determine whether a product is a liquid or solid shall be performed using ASTM D4359-90 (May 25, 1990), which is incorporated by reference herein; and

(d) Compliance determinations for charcoal lighter material products: Testing to determine compliance with the certification requirements for charcoal lighter material shall be performed using the procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 28, 1991), which is incorporated by reference herein; and

(e) Testing to determine distillation points of petroleum distillate-based charcoal lighter materials shall be performed using ASTM D86-90 (Sept. 28, 1990), which is incorporated by reference herein; and

(f) No person shall create, alter, falsify, or otherwise modify records in such a way that the records do not accurately reflect the constituents used to manufacture a product,

the chemical composition of the individual product, and any other test, processes, or records used in connection with product manufacture.

719.20 Each part of this regulation shall be deemed severable, and in the event that any part of this regulation is held to be invalid, the remainder of this regulation shall continue in full force and effect.

719.21 Alternative Control Plan (ACP) for Consumer Products: The purpose of this subsection is to provide an alternative method to comply with the Table of Standards specified in §719.2. This alternative is provided by allowing responsible ACP parties the option of voluntarily entering into separate "alternative control plans" for consumer products, as specified in sections 719.1-719.11 of this regulation. Only responsible ACP parties for consumer products may enter into an ACP;

(a) Any manufacturer of consumer products which have been granted an ACP Agreement by the CARB under the provisions in Subchapter 8.5, Article 4, Sections 94540-94555, of Title 17 of the California Code of Regulations shall be exempt from the Table of Standards in §719.2(a) for the period of time that the CARB ACP Agreement remains in effect provided that all ACP Products within the CARB ACP Agreement are contained in the Table of Standards in § 719.2(a) of this regulation. Any manufacturer claiming such an ACP Agreement on this basis must submit to the District a copy of the CARB ACP decision (i.e., the Executive Order), including all conditions established by CARB applicable to the exemption; and

(b) Manufacturers of consumer products that have been granted an ACP Agreement under the ACP provision in Subchapter 8.5, Article 4, sections 94540-94555, of Title 17 of the California Code of Regulations based on California specific data, or that have not been granted an exemption by the CARB may seek an ACP Agreement in accordance with subsections (c) - (m) of this section; and

(c) To be considered by the District for approval, an application for a proposed ACP shall be submitted in writing to the District by the responsible ACP party and shall contain all of the following:

(1) An identification of the contact persons, phone numbers, names and addresses of the responsible ACP party which is submitting the ACP application and will be implementing the ACP requirements specified in the ACP Agreement; and

(2) A statement of whether the responsible ACP party is a small business or a one-product business, as defined in section; and

(3) A listing of the exact product brand name, form, available variations (flavors, scents, colors, sizes, etc.), and applicable product

category(ies) for each distinct ACP product that is proposed for inclusion in the ACP; and

(4) For each proposed ACP product identified in subsection (b)(3), a demonstration to the satisfaction of the District that the enforceable sales records to be used by the responsible ACP party for tracking product sales meet the minimum criteria specified in subsection (b)(4)(E). To provide this demonstration, the responsible ACP party shall do all of the following:

(A) Provide the contact persons, phone numbers, names, street and mail addresses of all persons and businesses who will provide information that will be used to determine the Enforceable Sales; and

(B) Determine the Enforceable Sales of each product using enforceable sales records as defined in §799; and

(C) Demonstrate, to the satisfaction of the District, the validity of the Enforceable Sales based on enforceable sales records provided by the contact persons or the responsible ACP party; and

(D) Calculate the percentage of the Gross District of Columbia Sales, as defined in §799 which is comprised of Enforceable Sales; and

(E) Determine which ACP products have Enforceable Sales which are seventy-five (75.0)% or more of the Gross District of Columbia Sales. Only ACP products meeting this criteria shall be allowed to be sold in District of Columbia under an ACP; and

(5) For each of the ACP products identified in subsection (b)(4)(E) of this section, the inclusion of the following:

(A) Legible copies of the existing labels for each product; and

(B) The VOC Content and LVP Content for each product. The VOC Content and LVP Content shall be reported for two different periods, as follows:

(i) The VOC and LVP contents of the product at the time the application for an ACP is submitted; and

(ii) Any VOC and LVP contents of the product, which have occurred at any time within the four years prior to the date of submittal of the application for an ACP, if either the VOC or LVP contents have varied by more than plus/minus ten percent (± 10.0%) of the VOC or LVP Contents reported in subsection (5)(B)(ii) this section; and

(6) A written commitment obligating the responsible ACP party to date-code every unit of each ACP product approved for inclusion in the ACP. The commitment shall require the responsible ACP party to display the date-code on each ACP product container or package no later than five (5) working days after the date an ACP Agreement approving an ACP is signed by the District of Columbia; and

(7) An operational plan covering all the products identified under subsection (b)(4)(E) of this section for each compliance period that the ACP will be in effect. The operational plan shall contain all of the following:

(A) An identification of the compliance periods and dates for the responsible ACP party to report the information required by the District in the ACP Agreement approving an ACP. The length of the compliance period shall be chosen by the responsible ACP party provided, however, that no compliance period shall be longer than three hundred sixty-five (365) days. The responsible ACP party shall also choose the dates for reporting information such that all required VOC Content and Enforceable Sales data for all ACP products shall be reported to the District at the same time and at the same frequency; and

(B) An identification of specific enforceable sales records to be provided to the District for enforcing the provisions of this regulation and the ACP Agreement approving an ACP. The enforceable sales records shall be provided to the District no later than the compliance period dates specified in subsection (7)(A) of this section; and

(C) For a small business or a one-product business which will be relying to some extent on Surplus Trading to meet its ACP Limits, a written commitment from the responsible ACP party(ies) that they will be transfer the Surplus Reductions to the small business or one-product business upon approval of the ACP; and

(D) For each ACP product, all VOC content levels which will be applicable for the ACP product during each compliance period. The plan shall also identify the specific method(s) by which the VOC Content will be determined and the statistical accuracy and precision (repeatability and reproducibility) calculated for each specified method; and

(E) The projected Enforceable Sales for each ACP product at each different VOC Content for every compliance period that the ACP will be in effect; and

(F) A detailed demonstration showing the combination of specific ACP reformulations or Surplus Trading (if applicable) that is sufficient to ensure that the ACP Emissions will not exceed the ACP Limit for each compliance period that the ACP will be in effect, the approximate date within each compliance period that such reformulations or Surplus Trading are expected to occur, and the extent to which the VOC Contents of the ACP products will be reduced (i.e., by ACP reformulation). This demonstration shall use the equations specified in §799 for projecting the ACP Emissions and ACP Limits during each compliance period. This demonstration shall also include all VOC Content levels and projected Enforceable Sales for all ACP products to be sold in District during each compliance period; and

(G) A certification that all reductions in the VOC Content of a product will be real, actual reductions that do not result from changing product names, mischaracterizing ACP product reformulations that have occurred in the past, or any other attempts to circumvent the provisions of this regulation; and

(H) Written explanations of the date-codes that will be displayed on each ACP product's container or packaging; and

(I) A statement of the approximate dates by which the responsible ACP party plans to meet the applicable ACPVOC standards for each product in the ACP; and

(J) An operational plan ("reconciliation of shortfalls plan") which commits the responsible ACP party to completely reconcile any shortfalls in any and all cases, even, to the extent permitted by law, if the responsible ACP party files for bankruptcy protection. The plan for reconciliation of shortfalls shall contain all of the following:

(i) A clear and convincing demonstration of how shortfalls of up to 5%, 10%, 15%, 25%, 50%, 75% and 100% of the applicable ACP Limit will be completely reconciled within ninety (90) working days from the date the shortfall is determined;

(ii) A listing of the specific records and other information that will be necessary to verify that the shortfalls were reconciled as specified in this subsection (7)(J); and

(iii) A commitment to provide any record or information requested by the District of Columbia to verify that the shortfalls have been completely reconciled; and

(K) A declaration, signed by a legal representative for the responsible ACP party, which states that all information and operational plans submitted with the ACP application are true and correct.

719.22 In accordance with the time periods specified in §719.24, the District shall issue an ACP Agreement approving an ACP which meets the requirements of this regulation. The District shall specify such terms and conditions as are necessary to ensure that the emissions from the ACP products do not exceed the emissions that would have occurred if the ACP products subject to the ACP had met the VOC standards specified in §719.2. The ACP shall also include:

(a) Only those ACP products for which the Enforceable Sales are at least 75.0% of the Gross District of Columbia Sales, as determined in subsection (4)(E) of this section; and

(b) A reconciliation of shortfalls plan meeting the requirements of this regulation; and

(c) Operational terms, conditions, and data to be reported to the District to ensure that all requirements of this regulation are met.

719.23 The District shall not approve an ACP submitted by a responsible ACP party if the determines, upon review of the responsible ACP party's compliance history with past or current ACPs or the requirements for consumer products in sections 719.1-719.11 of this regulation, that the responsible ACP party has a recurring pattern of violations and has consistently refused to take the necessary steps to correct those violations.

719.24 The District shall take appropriate action on an ACP within the following time periods:

(a) Within thirty (30) working days of receipt of an ACP application, the District shall inform the applicant in writing that either:

(1) the application is complete and accepted for filing, or

(2) the application is deficient, and identify the specific information required to make the application complete;

(b) Within thirty (30) working days of receipt of additional information provided in response to a determination that an ACP application is deficient, the District of Columbia shall inform the applicant in writing that either:

(1) the additional information is sufficient to make the application complete, and the application is accepted for filing, or

(2) the application is deficient, and identify the specific information required to make the application complete; and

(c) If the District finds that an application meets the requirements of §719.19(3) of this regulation, then he or she shall issue an ACP Agreement in accordance with the requirements of this regulation. The District shall act to approve or disapprove a complete application within ninety (90) working days after the application is deemed complete; and

(d) Before the end of each time period specified in this section, the District and the responsible ACP party may mutually agree to a longer time period for the to take the appropriate action.

719.25 All information specified in the ACP Agreement approving an ACP shall be maintained by the responsible ACP party for a minimum of three years after such records are generated. Such records shall be clearly legible and maintained in good condition during this period; and

(a) The records specified in this section shall be made available to the District of Columbia or his or her authorized representative:

(1) Immediately upon request, during an on-site visit to a responsible ACP party, or

(2) Within five (5) working days after receipt of a written request from the District; or

(3) Within a time period mutually agreed upon by both the District and the responsible ACP party.

719.26 Any person who commits a violation of this regulation is subject to the penalties specified in applicable District of Columbia laws and regulations. Failure to meet any requirement of this regulation or any condition of an applicable ACP Agreement shall constitute a single, separate violation of this regulation for each day until such requirement or condition is satisfied, except as otherwise provided in subsections (a)-(i) of this section; and

(a) False reporting of any information contained in an ACP application, or any supporting documentation or amendments thereto, shall constitute a single, separate violation of the requirements of this regulation for each day that the approved ACP is in effect; and

(b) Any exceedance during the applicable compliance period of the VOC content specified for an ACP product in the ACP Agreement approving an ACP shall constitute a single, separate violation of the requirements of this regulation for each ACP product which exceeds the specified VOC Content that is sold, supplied, offered for sale, or manufactured for use in the District of Columbia; and

(c) Any of the following actions shall each constitute a single, separate violation of the requirements of this regulation for each day after the applicable deadline until the requirement is satisfied:

(1) Failure to report data (i.e., "missing data") or failure to report data accurately (i.e., "inaccurate data") in writing to the District regarding the VOC content, LVP Content, Enforceable Sales, or any other information required by any deadline specified in the applicable ACP Agreement; and

(2) False reporting of any information submitted to the District for determining compliance with the ACP requirements; and

(3) Failure to completely implement the reconciliation of shortfalls plan that is set forth in the ACP Agreement, within thirty (30) working days from the date of written notification of a shortfall by the District; and

(4) Failure to completely reconcile the shortfall as specified in the ACP Agreement, within ninety (90) working days from the date of written notification of a shortfall by the District; and

(d) False reporting or failure to report any of the information specified in §719.27(a)(2), or the sale or transfer of invalid Surplus Reductions, shall constitute a single, separate violation of the requirements of this regulation for each day during the time period for which the Surplus Reductions are claimed to be valid; and

(e) Except as provided in subsection (f) of this section, any exceedance of the ACP Limit for any compliance period that the ACP is in effect shall constitute a single, separate violation of the requirements of this regulation for each day of the applicable compliance period. The District shall determine whether an exceedance of the ACP Limit has occurred as follows:

(1) If the responsible ACP party has provided all required information for the applicable compliance period specified in the ACP Agreement approving an ACP, then the District of Columbia shall determine whether an exceedance has occurred using the Enforceable Sales records and VOC Content for each ACP product, as reported by the responsible ACP party for the applicable compliance period; and

(2) If the responsible ACP party has failed to provide all the required information specified in the ACP Agreement for an applicable compliance period, the District shall determine whether an exceedance of the ACP Limit has occurred as follows:

(A) For the missing data days, the District shall calculate the total maximum historical emissions, as specified in §799; and

(B) For the remaining portion of the compliance period which are not missing data days, the District shall calculate the emissions for each ACP product using the Enforceable Sales records and VOC Content that were reported for that portion of the applicable compliance period; and

(C) The ACP Emissions for the entire compliance period shall be the sum of the total maximum historical emissions, determined pursuant to subsection (e)(2)(A), and the emissions determined pursuant to subsection (e)(2)(B); and

(D) The District shall calculate the ACP Limit for the entire compliance period using the ACP Standards applicable to each ACP product and the Enforceable Sales records specified in subsection (e)(2)(B). The Enforceable Sales for each ACP Product during missing data days, as specified in subsection (e)(2)(A), shall be zero (0); and

(E) An exceedance of the ACP Limit has occurred when the ACP Emissions, determined pursuant to subsection (e)(2)(C) exceeds the ACP Limit, determined pursuant to subsection (e)(2)(D); and

(f) If a violation specified in subsection (e) of this section occurs, the responsible ACP party may, pursuant to this paragraph, establish the number of violations as calculated according to the following equation:

NEV = (ACP Emissions - ACP Limit) x 1 Violation/40 Pounds

where,

NEV = number of ACP Limit violations

ACP Emissions = the ACP Emissions for the compliance period

ACP Limit = the ACP Limit for the compliance period

The responsible ACP party may determine the number of ACP Limit violations pursuant to this paragraph only if it has provided all required information for the applicable compliance period, as specified in the ACP Agreement approving the ACP. By choosing this option, the responsible ACP party waives any and all legal objections to the calculation of the ACP Limit violations pursuant to this subsection (f);

(g) In assessing the amount of penalties for any violation occurring pursuant to subsections (a)-(f) of this section, the circumstances identified in applicable District of Columbia health and safety laws and regulations shall be taken into consideration;

(h) A cause of action against a responsible ACP party under this section shall be deemed to accrue on the date(s) when the records establishing a violation are received by the District;

(i) The responsible ACP party is fully liable for compliance with the requirements of this regulation, even if the responsible ACP party contracts with or otherwise relies on another person to carry out some or all of the requirements of this regulation.

719.27 The District shall issue Surplus Reduction Certificates which establish and quantify, to the nearest pound of VOC reduced, any Surplus Reductions achieved by a responsible ACP party operating under an ACP. The Surplus Reductions can be bought from, sold to, or transferred to a responsible ACP party operating under an ACP, as provided in section 719.22-719.26. All Surplus Reductions shall be calculated by the District at the end of each compliance period within the time specified in the approved ACP. Surplus Reduction Certificates shall not constitute instruments, securities, or any other form of property.

(a) The issuance, use, and trading of all Surplus Reductions shall be subject to the following provisions:

(1) For the purposes of this regulation, VOC reductions from sources of VOCs other than consumer products subject to the VOC standards specified in 719.2 may not be used to generate Surplus Reductions; and

(2) Surplus Reductions are valid only when generated by a responsible ACP party, and only while that responsible ACP party is operating under an approved ACP; and

(3) Surplus Reductions are valid only after the District has issued an ACP Agreement pursuant to subsection (1) of this section; and

(4) Any Surplus Reductions issued by the District may be used by the responsible ACP party who generated the surplus until the reductions expire, are traded, or until the ACP is canceled pursuant to §719.31; and

(5) Surplus Reductions cannot be applied retroactively to any compliance period prior to the compliance period in which the reductions were generated; and

(6) Except as provided in 719.26(7)(B) of this section, only small or one-product businesses selling products under an approved ACP may purchase Surplus Reductions. An increase in the size of a small business or one-product business shall have no effect on Surplus Reductions purchased by that business prior to the date of the increase; and

(7) While valid, Surplus Reductions can be used only for the following purposes:

(A) to adjust either the ACP Emissions of either the responsible ACP party who generated the reductions or the responsible ACP party to which the reductions were traded, provided the Surplus Reductions are not to be used by any responsible ACP party to further lower its ACP Emissions when its ACP Emissions are equal to or less than the ACP Limit during the applicable compliance period; or

(B) to be traded for the purpose of reconciling another responsible ACP party's shortfalls, provided such reconciliation is part of the reconciliation of shortfalls plan approved by the District of Columbia pursuant to §719.16 (a)(7); and

(8) A valid Surplus Reduction shall be in effect starting five (5) days after the date of issuance by the District, for a continuous period equal to the number of days in the compliance period during which the Surplus Reduction was generated. The Surplus Reduction shall then expire at the end of its effective period; and

(9) At least five (5) working days prior to the effective date of transfer of Surplus Reductions, both the responsible ACP party which is selling Surplus Reductions and the responsible ACP party which is buying the Surplus Reductions shall, either together or separately, notify the District of Columbia in writing of the transfer. The notification shall include all of the following:

(A) The date the transfer is to become effective; and

(B) The date the Surplus Reductions being traded are due to expire; and

(C) The amount (in pounds of VOCs) of Surplus Reductions that are being transferred; and

(D) The total purchase price paid by the buyer for the Surplus Reductions; and

(E) The contact persons, names of the companies, street and mail addresses, and phone numbers of the responsible ACP parties involved in the trading of the Surplus Reductions; and

(F) A copy of the District of Columbia-issued Surplus Reductions Certificate, signed by both the seller and buyer of the certificate, showing transfer of all or a specified portion of the Surplus Reductions. The copy shall show the amount of any remaining non-traded Surplus Reductions, if applicable, and shall show their expiration date. The copy shall indicate that both the buyer and seller of the Surplus Reductions fully understand the conditions and limitations placed upon the transfer of the Surplus Reductions and accept full responsibility for the appropriate use of such Surplus Reductions as provided in this section.

(10) Surplus Reduction Credits shall only be traded between ACP product(s) for consumer products.

719.28 The use of Limited-Use Surplus Reduction Credits for Early Reformulations of ACP Products shall be subject to the following provisions:

(a) For the purposes of this section, "early reformulation" means an ACP product which is reformulated to result in a reduction in the product's VOC Content, and which is sold, supplied, or offered for sale in District of Columbia for the first time during the one-year (365 day) period immediately prior to the date on which the application for a proposed ACP is submitted to the District. "Early reformulation" does not include any reformulated ACP products which are sold, supplied, or offered for sale in District of Columbia more than one year prior to the date on which the ACP application is submitted to the District; and

(b) If requested in the application for a proposed ACP, the District shall, upon approval of the ACP, issue Surplus Reduction Credits for early reformulation(s) of ACP product(s), provided that all of the following documentation has been provided by the responsible ACP party to the satisfaction of the District:

(1) Accurate documentation showing that the early reformulation(s) reduced the VOC content of the ACP product(s) to a level which is below the Pre-ACP VOC content of the product(s), or below the applicable VOC standard(s) specified in §719.2, whichever is the lesser of the two; and

(2) Accurate documentation demonstrating that the early reformulated ACP product(s) was sold in District of Columbia retail outlets within the time period specified in 719.28(a); and

(3) Accurate sales records for the early reformulated ACP product(s) which meet the definition of "Enforceable Sales Records" in §799, and which demonstrate that the Enforceable Sales for the ACP product(s) are at least seventy-five)(75.0)% of the Gross District of Columbia Sales for the product(s), as specified in §719.16 (b)(4); and

(4) Accurate documentation for the early reformulated ACP product(s) which meets the requirements specified in sections 719.16(b)(3)-(4), (b)(7)(G)-(H), and (a)(viii), and which identifies the specific test methods for verifying the claimed early reformulation(s) and the statistical accuracy and precision of the test methods as specified in §719.16 (b)(7)(D); and

(c) Surplus Reduction Credits issued pursuant to this subsection (c) shall be calculated separately for each early reformulated ACP product by the District of Columbia according to the following equation:

$$SR = Enforceable\ Sales\ x\ \frac{((VOC\ Content)_{initial}\ (VOC\ Conten}{100}$$

where,

SR = Surplus Reductions for the ACP product, expressed to the nearest pound;

Enforceable Sales = the Enforceable Sales for the early reformulated ACP product, expressed to the nearest pound of ACP product;

VOC $Content_{initial}$ = the Pre-ACP VOC content of the ACP product, or the applicable VOC standard specified in 3 (a), whichever is the lesser of the two, expressed to the nearest 0.1 pounds of VOC per 100 pounds of ACP product;

VOC $Content_{final}$ = the VOC Content of the early reformulated ACP product after the early reformulation is achieved, expressed to the nearest 0.1 pounds of VOC per 100 pounds of ACP product;

(d) The use of Surplus Reduction Credits issued pursuant to this subsection (d) shall be subject to all of the following provisions:

(1) Surplus Reduction Credits shall be used solely to reconcile the responsible ACP party's shortfalls, if any, generated during the first compliance period occurring immediately after the issuance of the ACP Agreement approving an ACP, and shall not be used for any other purpose; and

(2) Surplus Reduction Credits shall not be transferred to, or used by, any other responsible ACP party; and

(3) Except as provided in this subsection (iii), Surplus Reduction Credits shall be subject to all requirements applicable to Surplus Reductions and Surplus Trading, as specified in subsections 719.27.

719.29 At the end of each compliance period, the responsible ACP party shall make an initial calculation of any shortfalls occurring in that compliance period, as specified in the ACP Agreement approving the ACP. Upon receipt of this information, the District shall determine the amount of any shortfall that has occurred during the compliance period, and shall notify the responsible ACP party of this determination; and

(a) The responsible ACP party shall implement the reconciliation of shortfalls plan as specified in the ACP Agreement approving the ACP, within thirty

(30) working days from the date of written notification of a shortfall by the District; and

(b) All shortfalls shall be completely reconciled within ninety (90) working days from the date of written notification of a shortfall by the District, by implementing the reconciliation of shortfalls plan specified in the ACP Agreement approving the ACP; and

(c) All requirements specified in the ACP Agreement approving an ACP, including all applicable ACP Limits, shall remain in effect while any shortfalls are in the process of being reconciled.

719.30 Modifications of and ACP shall be subject to the following provisions:

(a) Modifications that do not require District pre-approval:

(1) The responsible ACP party shall notify the District, in writing, of any change in an ACP product's name, formulation, form, function, applicable product categories, VOC Content, LVP Content, date-codes, or recommended product usage directions, no later than fifteen (15) working days from the date such a change occurs. For each modification, the notification shall fully explain the following:

(A) the nature of the modification; and

(B) the extent to which the ACP product formulation, VOC Content, LVP Content, or recommended usage directions will be changed; and

(C) the extent to which the ACP Emissions and ACP Limit specified in the ACP Agreement will be changed for the applicable compliance period; and

(D) the effective date and corresponding date-codes for the modification; and

(b) Modifications that require District pre-approval:

(1) The responsible ACP party may propose modifications to the Enforceable Sales records or reconciliation of shortfalls plan specified in the ACP Agreement approving the ACP. Any such proposed modifications shall be fully described in writing and forwarded to the District. The responsible ACP party shall clearly demonstrate that the proposed modifications will meet the requirements of this regulation. The District shall act on the proposed modifications using the procedure set forth in §719.24. The

responsible ACP party shall meet all applicable requirements of the existing ACP until such time as any proposed modification(s) is approved in writing by the District.

(c) Except as otherwise provided in subsections (a) and (b) of this section, the responsible ACP party shall notify the District, in writing, of any information learned of by the responsible ACP party which may alter any of the information submitted pursuant to the requirements of §719.23. The responsible ACP party shall provide such notification to the District no later than fifteen (15) working days from the date such information is known to the responsible ACP party.

(d) Modification of an ACP by the District of Columbia:

(1) If the District determines that:

(A) the Enforceable Sales for an ACP product are no longer at least seventy-five (75.0)% of the Gross District of Columbia Sales for that product; or

(B) the information submitted pursuant to the approval process set forth in §719.23 is no longer valid; or

(C) the ACP Emissions are exceeding the ACP Limit specified in the ACP Agreement approving an ACP, then the District shall modify the ACP as necessary to ensure that the ACP meets all requirements of this regulation and that the ACP Emissions will not exceed the ACP Limit; and

(2) The District shall not modify the ACP without first affording the responsible ACP party an opportunity for a public hearing in accordance with the procedures specified in applicable District of Columbia laws and regulations, to determine if the ACP should be modified;

(3) If any applicable VOC standards specified in §719.2 are modified by the Air Resources Board in a future rule making, the District shall modify the ACP Limit specified in the ACP Agreement approving an ACP to reflect the modified ACP VOC standards as of their effective dates.

719.31 An ACP shall remain in effect until:

(a) The ACP reaches the expiration date specified in the ACP Agreement; and

(b) The ACP is modified by the responsible ACP party and approved by the District, as provided in §719.30; and

(c) The ACP is modified by the District of Columbia, as provided in §719.30(b);

(d) The ACP includes a product for which the VOC standard specified in §719.2 (a) is modified by the District of Columbia in a future rule making, and the responsible ACP party informs the District in writing that the ACP will terminate on the effective date(s) of the modified standard; and

(e) The ACP is cancelled pursuant to subsection (2) of this section.

719.32 The District shall cancel an ACP if any of the following circumstances occur:

(a) the responsible ACP party demonstrates to the satisfaction of the District that the continuation of the ACP will result in an extraordinary economic hardship; and

(b) the responsible ACP party violates the requirements of the approved ACP, and the violation(s) results in a shortfall that is twenty (20.0)% or more of the applicable ACP Limit (i.e., the ACP Emissions exceed the ACP Limit by 20.0% or more); and

(c) the responsible ACP party fails to meet the requirements of §719.29 (Reconciliation of Shortfalls) within the time periods specified in §719.29.

(d) the responsible ACP party has demonstrated a recurring pattern of violations and has consistently failed to take the necessary steps to correct those violations.

719.33 The District shall not cancel an ACP pursuant to section 719.32 of this section without first affording the responsible ACP party an opportunity for a public hearing in accordance with the procedures specified by applicable District of Columbia laws and regulations, to determine if the ACP should be canceled.

719.34 The responsible ACP party for an ACP which is canceled pursuant to this section and who does not have a valid ACP to immediately replace the canceled ACP shall meet all of the following requirements:

(a) all remaining shortfalls in effect at the time of ACP cancellation shall be reconciled in accordance with the requirements of §719.29; and

(b) all ACP products subject to the ACP shall be in compliance with the applicable VOC standards in 719.2 immediately upon the effective date of ACP cancellation.

719.35 Any violations incurred pursuant to §719.26 shall not be cancelled or in any way affected by the subsequent cancellation or modification of an ACP pursuant to §719.30 or 719.31.

719.36 The information required by sections 719.16(b)(1)-(2) and 719.27(a)(9) is public information which may not be claimed as confidential. All other information submitted to the District to meet the requirements of this regulation shall be handled in accordance with the procedures specified in applicable District of Columbia laws and regulations.

719.37 A responsible ACP party may transfer an ACP to another responsible ACP party, provided that all of the following conditions are met:

(a) The District shall be notified, in writing, by both responsible ACP parties participating in the transfer of the ACP and its associated ACP Agreement. The written notifications shall be postmarked at least five (5) working days prior to the effective date of the transfer and shall be signed and submitted separately by both responsible parties. The written notifications shall clearly identify the contact persons, business names, mail and street addresses, and phone numbers of the responsible parties involved in the transfer;

(b) The responsible ACP party to which the ACP is being transferred shall provide a written declaration stating that the transferee shall fully comply with all requirements of the ACP Agreement approving the ACP and this regulation.